

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL PATRICK ROKSANDICH
and KELLY J. ROKSANDICH,

Plaintiffs,

v.

Civil Action No. 5:06CV158
(STAMP)

HLC TRUCKING COMPANY and
DARRELL DWAYNE ASH,

Defendants.

**ORDER DENYING DEFENDANT'S MOTION
FOR PROTECTIVE ORDER AS MOOT,
DENYING DEFENDANT'S MOTION TO EXCLUDE
DR. GERSZTEN AS A WITNESS AS MOOT AND
DENYING PLAINTIFF'S MOTION TO MODIFY THIS COURT'S
PREVIOUS TREATING PHYSICIANS DISCLOSURE ORDER
AND TO PERMIT DR. GERSZTEN TO TESTIFY AS MOOT**

On November 28, 2007, defendant HLC Trucking Co. ("HLC") filed a motion to exclude Dr. Peter Gerszten as a witness, to exclude any reports, records and opinions of Dr. Gerszten and to exclude an August 24, 2007 MRI of plaintiff Michael Roksandich. On December 3, 2007, the plaintiffs filed a response in opposition as well as a motion to modify this Court's previous treating physicians disclosure order, to permit plaintiff's physician, Dr. Gerszten, to testify, to permit the use of any and all reports, records and opinions of Dr. Gerszten, to permit the use of the August 24, 2007 MRI, and to extend the deadline for the plaintiffs' disclosure of treating physician Dr. Gerszten. On December 6, 2007, HLC filed a motion for a protective order regarding the evidentiary deposition of Dr. Gerszten, or in the alternative to stay the deposition which was scheduled to take place on December 7, 2007. The plaintiffs

filed a response. On December 6, 2007, this Court held a hearing on the motion for a protective order. At the hearing, the undersigned judge continued the trial in this matter to June 3, 2008 at 8:30 a.m. in order to permit discovery regarding the opinions of Dr. Gerszten and regarding the results of Michael Roksandich's pending surgery.

Because the trial has been continued for a period of six months, HLC will not be unfairly surprised or prejudiced by the plaintiffs' untimely disclosures. Accordingly, the defendant's motion for a protective order, the defendant's motion to exclude Dr. Gerszten as a witness, to exclude any reports, records and opinions of Dr. Gerszten and to exclude an August 24, 2007 MRI of plaintiff Michael Roksandich, and the plaintiffs' motion to modify this Court's previous treating physicians disclosure order, to permit plaintiff's physician, Dr. Gerszten, to testify, to permit the use of any and all reports, records and opinions of Dr. Gerszten, to permit the use of the August 24, 2007 MRI, and to extend the deadline for the plaintiffs' disclosure of treating physician Dr. Gerszten are DENIED AS MOOT without prejudice to refiling should the same or similar disputes arise again.

An amended scheduling order will be entered by separate order.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: December 7, 2007

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE